

1 Shauna R. Miller, Bar No. 015197  
2 State Bar of Arizona  
3 111 West Monroe, Suite 1800  
4 Phoenix, Arizona 85003-1742  
5 Telephone (602) 340-7278  
6 Staff Bar Counsel

7 George L. Paul, Bar No. 007476  
8 *Lewis and Roca*  
9 40 North Central Ave.  
10 Phoenix, Arizona 85004-4429  
11 Telephone (602) 262-5326  
12 Respondent's Counsel

13 **BEFORE THE DISCIPLINARY COMMISSION**  
14 **OF THE SUPREME COURT OF ARIZONA**

15 **IN THE MATTER OF A MEMBER**  
16 **OF THE STATE BAR OF ARIZONA**

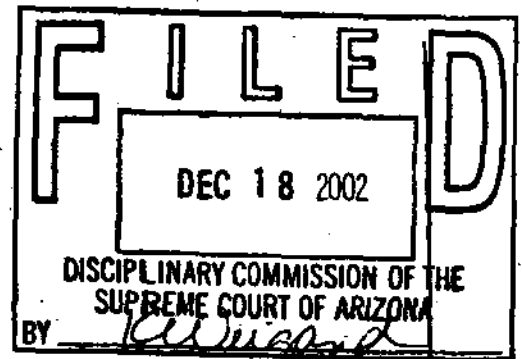
17 **JASON D. LAMM**  
18 **Bar No. 018454,**

19 **Respondent.**

File No. 01-1570

**TENDER OF ADMISSIONS  
AND AGREEMENT FOR  
DISCIPLINE BY CONSENT**

20 This Agreement is entered into between the State Bar of Arizona and  
21 Respondent Jason D. Lamm, who is represented in these proceedings by  
22 George L. Paul, and is submitted pursuant to Rule 56(a), Ariz.R. S. Ct. and the  
23 guidelines for discipline by consent issued by the Disciplinary Commission of  
24 the Supreme Court of Arizona. Respondent's admissions to the charges are  
25 being tendered in exchange for the form of discipline stated herein, subject to  
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1 review and acceptance by the Disciplinary Commission. Respondent  
2 negligently engaged in an improper communication with an individual,  
3 violated his duty to the profession and knowingly made a misrepresentation to  
4 an individual in order to gain access to a criminal suspect. Respondent will  
5 receive a censure for his conduct. Restitution is not applicable in this matter.  
6 The Joint Memorandum in Support of Agreement by Consent is filed  
7 contemporaneously herewith.  
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#### 10 FACTS

- 11 1. Respondent was admitted to practice law in Arizona on November 13,  
12 1997.
- 13 2. A Probable Cause order was entered in this matter on July 2, 2002. A  
14 formal complaint has not been filed.
- 15 3. During the time period relevant to the conduct in this matter, Respondent  
16 was employed by the Maricopa County Attorney's Office as a Deputy  
17 County Attorney.
- 18 4. In early 2001, the Phoenix police were conducting an investigation of  
19 Terry Alexander ("Alexander") concerning the use of the Internet to  
20 procure sex with minors.  
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1 5. Detective Jason Scoles briefed Respondent about Alexander and  
2 Respondent told Detective Scoles he wanted to be updated on the case.

3 6. When Alexander was arrested on May 29, 2001, Detective Scoles  
4 informed Respondent.  
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6 7. On May 30, 2001, Respondent went to the Maricopa County Jail.  
7 Respondent maintains he told civil detention officer Michael Dominguez  
8 he wanted to speak to Alexander. The State Bar maintains that Respondent  
9 informed Mr. Dominguez that Respondent wanted to interview Alexander.  
10 For purposes of this agreement, the State Bar does not contest  
11 Respondent's version of the conversation.  
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14 8. Alexander was brought out and led to the shower area to speak with  
15 Respondent. Respondent at some point told Alexander their conversation  
16 "never happened." Respondent told Alexander that some people were  
17 "looking out for him" and that Alexander should not tell anyone at the jail  
18 why he was there. Respondent maintains he told Alexander this as other  
19 inmates often assault child sex offenders. For purposes of this agreement,  
20 the State Bar does not contest Respondent's version of the conversation.  
21 Alexander was also told there would probably be a Grand Jury hearing and  
22 that his bail would probably be \$50,000.00.  
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1 9. Respondent then told Alexander that after the Grand Jury an attorney who  
2 was "the best in this area for defense work in internet cases" would be  
3 calling him and when Alexander asked how he would know this attorney,  
4 Respondent told him to just wait and the attorney would call. Alexander  
5 was then escorted back to his cell.  
6

7 10. For purposes of this consent agreement, Respondent conditionally admits  
8 that he misled detention officer Dominguez concerning the reason  
9 Respondent wanted to talk to Alexander.  
10

11 11. For purposes of this consent agreement, Respondent conditionally admits  
12 he was planning on leaving the Maricopa County Attorney's Office to go  
13 into criminal defense work and the reason Respondent talked with  
14 Alexander had to do with soliciting referrals in the future.  
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17 12. For purposes of this consent agreement, Respondent conditionally admits  
18 his statements to Alexander caused Alexander to misunderstand  
19 Respondent's role in Alexander's matter, and Respondent did not make  
20 reasonable efforts to correct the misunderstanding.  
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### 23 CONDITIONAL ADMISSIONS

24 Respondent's conduct as described above violated Rule 42, Ariz.R.S.Ct.,  
25 specifically, ER 4.3, ER 7.3, and ER 8.4(c).  
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### SANCTION

Respondent and the State Bar agree that on the basis of the conditional admissions contained herein, the appropriate disciplinary sanction is as follows:

1. Respondent shall receive a public censure for violation of Rule 42 Ariz. R. S. Ct., specifically ER 4.3, ER 7.3, and ER 8.4(c).

2. Respondent shall attend the State Bar's Ethics Enhancement Program within 120 days from the date the judgment and order become effective.

3. Respondent shall be assessed the costs and expenses incurred in these disciplinary matters, pursuant to Rule 52(a)(8), Ariz. R. S. Ct. A statement of costs and expenses is attached hereto.

Respondent, by entering into this agreement, waives his right to a formal disciplinary hearing that he would otherwise be entitled to pursuant to Rule 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a hearing. Respondent further waives all motions, defenses, objections, or requests which he has made or raised, or could assert hereafter, if the conditional admissions and stated form of discipline are approved. Respondent does have the assistance of counsel in these proceedings.

Respondent acknowledges that he has read this agreement and received a copy of it.

This tender of admissions and agreement for discipline by consent will be submitted to the Disciplinary Commission for approval. Respondent realizes that the Commission may request his presence at a hearing for presentation of evidence and/or oral argument in support of this agreement. He further recognizes that the Commission may recommend rejection of this agreement, and that the Arizona Supreme Court may accept or reject the Commission's recommendation. If the Arizona Supreme Court or the Disciplinary Commission rejects this agreement, respondent's conditional admissions are withdrawn.

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I am aware of the Rules of the Supreme Court with respect to discipline and reinstatement.**

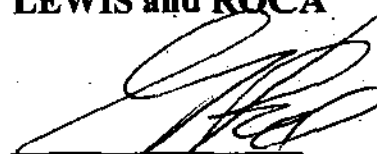
DATED this 10<sup>th</sup> day of December, 2002.

  
Jason D. Lamm  
Respondent

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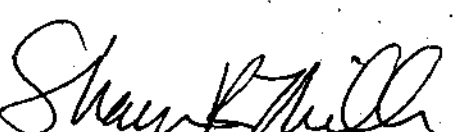
DATED this 17<sup>th</sup> day of December, 2002.

LEWIS and ROCA

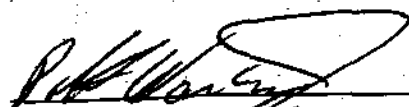
  
George L. Paul  
Respondent's Counsel

DATED this 18<sup>th</sup> day of December, 2002.

STATE BAR OF ARIZONA

  
Shauna R. Miller  
Staff Bar Counsel

Approved as to form and content:

  
Chief Bar Counsel

Original filed this 18<sup>th</sup> day  
of December, 2002, with:

Disciplinary Clerk's Office  
Supreme Court of Arizona  
Certification and Licensing Division  
1501 W. Washington #104  
Phoenix, AZ 85007-3329

1 Copy of the foregoing hand delivered  
2 this 18th day of December, 2002, to:

3 Lawyer Regulation Records Manager  
4 111 West Monroe St., Suite 1800  
5 Phoenix, AZ 85003

6 Copy of the foregoing mailed  
7 this 18th day of December, 2002, to:

8 George L. Paul  
9 *Lewis and Roca*  
10 40 North Central Ave.  
11 Phoenix, Arizona 85004-4429  
12 Respondent's counsel

13 by: *Paulina T. Chandler*  
14 SRM/  
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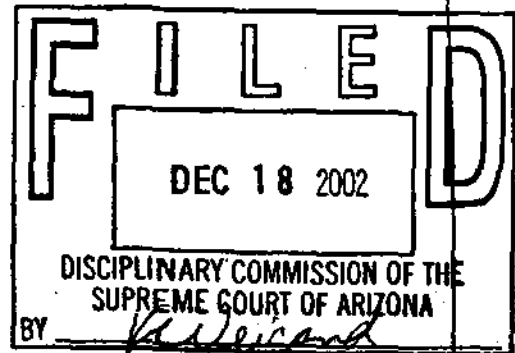
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18 **Bar No. 018454,**

19 **Respondent.**

File No. 01-1570

**JOINT MEMORANDUM IN  
SUPPORT OF AGREEMENT  
FOR DISCIPLINE BY  
CONSENT**

20 The State Bar of Arizona and Respondent Jason D. Lamm, who is  
21 represented in these proceedings by George L. Paul, hereby submit their Joint  
22 Memorandum in Support of the Agreement for Discipline by Consent.  
23 Respondent negligently engaged in an improper communication with an  
24 individual, violated his duty to the profession and knowingly made a  
25 misrepresentation to an individual in order to gain access to a criminal suspect.  
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Respondent will receive a censure for his conduct. Restitution is not applicable in this matter. The Tender of Admission and Agreement for Discipline by Consent is filed contemporaneously herewith.

The sanction agreed upon by the State Bar and the Respondent is that Respondent shall receive a censure for violating Rule 42 Ariz.R.S.Ct., specifically ERs 4.3, 7.3, and 8.4(c). Respondent shall also attend the State Bar's Ethics Enhancement Program. Respondent shall pay all costs and expenses incurred in these discipline matters. In arriving at the agreed upon sanctions, consideration was given to the ABA *Standards for Imposing Lawyer Sanctions* ("ABA Standards"), Rule 52(a), Ariz. R. S. Ct., and Arizona case law.

#### ABA STANDARDS

The ABA *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors the court should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. ABA *Standard* 1.3, Commentary.

In this matter, consideration was given to ABA *Standard* 5.13, 6.33 and 7.3. Briefly, censure is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an

1 individual in the legal system, when a lawyer negligently engages in conduct  
2 that is a violation of a duty owed to the profession, or when a lawyer  
3 knowingly engages in any other conduct that involves misrepresentation and  
4 causes injury or potential injury to a party or causes interference or potential  
5 interference with the outcome of the legal proceeding.  
6

7 In determining an appropriate sanction, both the Court and the  
8 Commission consider the duty violated, the lawyer's mental state, the actual or  
9 potential injury caused by the misconduct, and the existence of aggravating  
10 and mitigating factors. *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049  
11 (1990); ABA Standard 3.0.  
12

13 Respondent violated his duty to the profession and the public in his  
14 dealings with Alexander. Respondent was negligent in determining whether it  
15 was proper to engage in communication with Alexander. Respondent  
16 knowingly misrepresented the purpose of his visit with Alexander to civil  
17 detention officer Michael Dominguez. There was no actual injury to  
18 Alexander or the judicial system, but there was a potential for injury.  
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23 In deciding what sanction to impose the following aggravating and  
24 mitigating circumstances should be considered. In aggravation:  
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Standard 9.22(b) dishonest or selfish motive; Respondent contacted Alexander in the jail for potential personal gain.

In mitigation:

Standard 9.32(a) absence of a prior disciplinary record; Respondent does not have a prior discipline history,

Standard 9.32(e) full and free disclosure; Respondent cooperated fully with the State Bar during its investigation, and

Standard 9.32(m) remorse; Respondent is remorseful for his actions and will not repeat the misconduct.

### PROPORTIONALITY ANALYSIS

Sanctions against lawyers must have internal consistency to maintain an effective and enforceable system; therefore, the court looks to cases that are factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171, (1988). The parties were unable to find any cases that are factually similar to the present case.

Only one case is somewhat instructive. In *Matter of Hansen*, 179 Ariz. 229, 877 P.2d 802 (1994), Hansen was an assistant city prosecutor for the City of Phoenix. Hansen allowed the victim witness to leave the court prior to the trial allowing the case to be dismissed. Hansen lied to the judge and the

1 defense attorney, telling them the victim witness had not appeared for the trial.

2 Hansen violated ERs 1.3, 3.3, 4.1 and 8.4. The Disciplinary Commission  
3 found one aggravating factor and five mitigating factors. Despite the facts of  
4 case, Hansen received only a censure.  
5

6 Hansen's conduct was more egregious than Respondent's, in that she  
7 lied both to the Court and to opposing counsel, thereby causing the case to be  
8 dismissed and directly injuring the judicial process. In the present case,  
9 Respondent asked to interview or speak to an inmate without disclosing the  
10 purpose of the interview. There was no lie to a Judge or any opposing counsel  
11 and no actual harm occurred, only the potential for harm.  
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14 Despite Hansen's conduct, she had mitigating factors which supported a  
15 censure. In this case, Respondent made a misrepresentation to a detention  
16 officer in order to talk to Alexander. Respondent then failed to make it clear  
17 to Alexander why Respondent was interested in Alexander's case.  
18 Respondent violated ERs 4.3, 7.3 and 8.4(c) and has one aggravating factor,  
19 but also three mitigating factors, as discussed above.  
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23 Given the facts of this case, and its comparison to the only case of any  
24 similarity or relevance, in which the conduct was more egregious, a censure in  
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1 this case is proportional to sanctions imposed for similar or arguably more  
2 egregious conduct

3 Based on the aforementioned, the State Bar and Respondent agree that  
4 Respondent's conduct in this matter warrants a censure, attendance at the State  
5 Bar's Ethics Enhancement Program, and the costs and expenses incurred in  
6 these disciplinary matters and respectfully request the imposition of same  
7 herein.  
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### 10 CONCLUSION

11 Recognizing that it is the prerogative of the Disciplinary Commission to  
12 determine the appropriate sanction, it is nevertheless the belief of the State Bar  
13 and Respondent that the objectives of discipline will be met by the imposition  
14 of the above stated sanction.  
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17 DATED this 16<sup>th</sup> day of December, 2002.

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21 Jason D. Lamm  
22 Respondent  
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DATED this 17th day of January, 2002.

LEWIS and ROGA

  
George L. Paul  
Respondent's Counsel

DATED this 18th day of December, 2002.

STATE BAR OF ARIZONA

  
Shauna R. Miller  
Staff Bar Counsel

Approved as to form and content:

  
Chief Bar Counsel

Original filed this 18th day  
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